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# In the Supreme Court of the United States

October Term, 1985

ASHAHI METAL INDUSTRY CO., LTD.,

*Petitioner,*

vs.

SUPERIOR COURT OF CALIFORNIA IN AND FOR  
THE COUNTY OF SOLANO (CHENG SHIN RUBBER  
INDUSTRIAL CO., LTD., REAL PARTY IN INTEREST),

*Respondent.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

## BRIEF OF AMICUS CURIAE ALCAN ALUMINIO DO BRASIL, S.A. IN SUPPORT OF PETITIONER

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**INTEREST OF AMICUS CURIAE**

Alcan Aluminio do Brasil, S.A. ("Alcan") is a Brazilian corporation with headquarters in Sao Paulo, Brazil. Alcan is a wholly integrated aluminum manufacturer. All of its operations take place in Brazil.

Alcan is presently being sued by various plaintiffs in the United States and Puerto Rico, notwithstanding the fact that Alcan has no presence in the United States or

Puerto Rico; and the cookers which were alleged to have caused the injuries involved in these cases were designed, manufactured and sold in Brazil.

Suing Alcan in the United States places an unfair burden on Alcan by forcing it to defend itself halfway around the world and subjects it to a series of laws and regulations of a jurisdiction whose laws and regulations provide no protection or benefit to it in connection with its activities.

Written consent to file this brief has been obtained from counsel for Petitioner and Respondent. Copies are on file with the Clerk of this Court.

### SUMMARY OF ARGUMENT

This case presents an issue of growing concern to corporations whose products find their way into the expanding international marketplace. That issue is whether the presence of a company's goods in the United States subjects it to the courts and laws of the United States even though it has no presence in the United States and designs, manufactures and sells its products outside of the United States.

It is the position of Alcan that the assertion of jurisdiction over foreign national corporations simply because of the existence of their product in the United States, as exemplified by this case, is improper. These decisions conflict with the guidelines articulated by this Court in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), and they fail to acknowledge the substantially greater burden in establishing a basis in fairness when jurisdiction is asserted across national as opposed to state boundaries.

Alcan believes that the proper standard to be adopted by this Court is that promulgated in the case of *Hanson v. Denckla*, 357 U.S. 235 (1958), that a defendant must be connected to a forum to such a degree that he benefits from the laws of a forum before he can be sued in that forum. Because of the potential for abuse and inherent unfairness in requiring a foreign national to defend a case in a different country with different laws, customs and often language, this Court should require that a foreign national be receiving the benefits and protection of those laws prior to being subjected to liability under those laws. Any other standard would be an impractical standard and inherently unfair. Adopting such a standard would not disadvantage American consumers whose state and local legislative authorities have adequate measures available to them to protect the public.

Finally, permitting the exercise of jurisdiction in such cases does not resolve all the constitutional controversies inherent in these cases, since an attempt by California to adjudicate liability under California law would simply raise the foreign commerce issue as to whether a state law burdens foreign commerce when it applies to activities which all take place outside of the United States.

For the foregoing reasons, Alcan believes the decision of the Supreme Court of California should be reversed.

## ARGUMENT

### **I. DUE PROCESS REQUIRES THE PRESENCE OF A PRODUCT AND PURPOSEFUL EFFORT TO AVAIL ONESELF OF THE PRIVILEGE OF CONDUCTING BUSINESS IN THE FORUM SEEKING TO ASSERT JURISDICTION.**

#### **a. Due Process Requires More Than The Foreseeable Presence Of A Product In The Jurisdiction.**

In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), this Court clearly stated that more than mere foreseeability that a product will enter a jurisdiction is necessary in order for a court in that jurisdiction to assert in personam jurisdiction. In this regard this Court said:

The foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state, but rather is that the defendant's conduct and connection with the forum are such that he should reasonably anticipate being hauled into court. Nor can jurisdiction be supported on the theory that petitioners earn substantial revenue from goods used in Oklahoma.

*Id.* at 297.

In making this evaluation—that a defendant's conduct and connection with the forum are such that he should reasonably anticipate being haled into court—it seems rather trite to point out that there is a great difference between whether or not a U.S. national might be sued in another state as contrasted with the expectation by a

foreign national that it might be sued in another country for a product he sold in his country. In fact, the differences are as significant as the difference between movement across state borders as contrasted with movement across national borders.

The vast majority of cases on in personam jurisdiction, and all of the prior in personam jurisdiction<sup>1</sup> cases before this Court, have involved the assertion of jurisdiction between U.S. nationals and among states. Some courts have applied these principles, as has the California Supreme Court in this case, to foreign nationals operating exclusively in their own countries without any effort to recognize the significant difference between U.S. states and other nations. See, e.g., *Nelson v. Park Industries*, 717 F.2d 1120 (7th Cir. 1983); *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980); and *Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355 (9th Cir. 1983) *reh. granted, op. withdrawn, in part*, 733 F.2d 1335 (9th Cir. 1984).

However, not all courts have been insensitive to the common underlying national character that permits the assertion of in personam jurisdiction between states. In *Ford Motor Company v. Atwood Vacuum Machine*, 392 So. 2d 1305 (Fla. 1981) *cert. denied* 452 U.S. 901, the Florida Supreme Court allowed the assertion of jurisdiction on a citizen of another state recognizing that it was applying American municipal law, not a form of international law:

The peculiar features of the jurisdictional problem in the United States, then, is that our national economic and social unity is conducive to the full panoply of

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1. Clearly, this excepts *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984) where the issue was general rather than specific jurisdiction, since specific jurisdiction is the issue involved in the present case.

substantive transactions found internally in a unitary state but our political plurality requires a choice of law and jurisdictional rules as among separate sovereigns. The combination would be unendurable as a practical matter but for two facts. First, there are powerful historical and cultural forces that conduce to similarity and reciprocity of state law. Second, the Full Faith and Credit Clause and the Due Process Clause embody judicially enforceable limitations on state-court authority. However, interpreted from time to time, they make state-court jurisdiction a matter of American municipal law and not a species of demi-international law.

*Atwood* at 1309, citing Hazard, *A General Theory of State-Court Jurisdiction*, 1965 Sup. Ct. Rev. 241, 246-247 (citations omitted).

It was this line of reasoning that permitted the Florida Court of Appeals, post *Atwood*, to hold that the assertion of in personam jurisdiction upon a German company who designed, manufactured and sold a product in Germany was prohibited by the Due Process Clause of the United States Constitution where the only connection with Florida jurisdiction was the foreseeable existence of its product in Florida. *Maschinenfabrik Seydelmann v. Altman*, 468 So. 2d 826 (Fla. 2d DCA, 1985). In *Seydelmann* the Florida Appellate Court stated:

(c) *Seydelmann* carries on no discernible activities in Florida. The only nexus between *Seydelmann* and Florida is the presence in Florida of meat grinders manufactured by *Seydelmann* in Germany. The minimum contacts test is not met merely by showing that a manufacturer could foresee that his product would

be used in a particular state and that he derived some indirect economic benefit from its use.

The *Seydelmann* court implicitly recognized that the mere application of foreseeable use and indirect economic benefit is in reality no standard and, in the present context of a world economy, would give state courts worldwide jurisdiction as a practical matter.

This Court should reject the notion that state and federal courts can exercise what is tantamount to worldwide jurisdiction and adopt a standard more realistic and fair.

**b. This Court Should Reapply The Standard Of *Hanson v. Denckla* In The International Context.**

In *World-Wide Volkswagen, supra*, this Court reaffirmed the principle in *Hanson v. Denckla*, 357 U.S. 235 (1958), that a corporation meets the minimum contacts test when it "purposefully avails itself of the privilege of conducting activities within the forum state." *Hanson* at 253.

That principle has been subject to review by courts both before and after *Volkswagen*, and there is substantial consensus that a person purposefully avails himself of the privilege of doing business in a forum when he "invokes the benefits and protections of its law." In this regard the court in *La Voie v. General Aerospace Materials Co., Inc.*, 579 F. Supp. 298 (D.C. Mass. 1984) stated:

"Having ruled that the Massachusetts long-arm statute authorizes this Court to assert jurisdiction, the next matter to consider is whether the assertion of jurisdiction is consistent with the requirements of due

process. In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny, the United States Supreme Court determined that a court may assert jurisdiction over a person only if that person has "certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316. A court's analysis should focus on the interests and on the activities of the foreign defendant in the forum state, *Hahn v. Vermont Law School*, 698 F.2d at 51, and on whether the defendant 'purposefully avail[ed] itself of the privilege of conducting activities within the forum [s]tate, thus invoking the benefits and protections of its laws.' *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)."

See also *Mountaire Feeds, Inc. v. Argo Impex, S.A.*, 677 F.2d 651 (8th Cir. 1982); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

This standard of conduct has numerous advantages. First, it is objective and a party can know at the time it is undertaking activity whether or not that activity is subjecting it to jurisdiction in another forum. It is a fairly simple procedure to ask whether a particular type of activity invokes the benefits or protection of the laws of a forum. In this case it is difficult to imagine how a company who designs, manufactures, and sells a product in the Far East is benefitting or being protected by California law.

Second, it is balanced. It seems inherently contrary to the notion of traditional fairness to subject someone to liability under a standard of laws, which gives him no

protection or benefit. Certainly, that is the position in which the petitioner finds itself in this case. The only laws which give it protection are those of Taiwan and/or Japan, while it is being subjected to liability under the laws of California.

Third, it is consistent with the idea that one expects to defend a case in the forum before being haled into court in that forum. Certainly, if a party elects to enjoy the benefits and protection of the laws of a forum, it should expect to defend itself in that forum. In the same regard, if a party does not even expect to avail itself of the benefits of the forum it should rightfully not be haled into court in the forum.

In *Volkswagen*, this Court felt that it was unfair to haul World-Wide into the Oklahoma court even though it could foresee that its car might be used there. The Court noted World-Wide's failure to sell cars directly into that jurisdiction. Clearly, World-Wide was not in a position to benefit from the laws of Oklahoma; it should not be expected to defend a case there.

The petitioner is even in a more compelling position. It makes its sales in a foreign country. It is being asked to defend a lawsuit halfway around the world. It can hardly be said to have invoked the benefits of California's laws or its protections and it would be clearly unfair, inequitable and inconsistent with the principles of *Hanson* and *Volkswagen* to subject it to the jurisdiction of this court.

## **II. FAILURE TO PERMIT THE EXERCISE OF IN PERSONAM JURISDICTION UPON A FOREIGN NATIONAL CONDUCTING BUSINESS ABROAD DOES NOT LEAVE THE CONSUMER WITHOUT A REMEDY.**

As this case graphically illustrates, an injured consumer has more than an adequate remedy for an injury resulting from a defectively designed and/or manufactured product. In this case the injured plaintiff did not even sue the defendant. Injured plaintiffs have, at a minimum, importers and retailers in the United States who would be subject to suit. If states, or the United States, believe greater protection is necessary, they can legislate greater insurance protection by requiring importers and/or retailers of foreign manufactured products to have a minimum level of insurance in the United States to cover the cost of the products they sell.

## **III. PERMITTING THE EXERCISE OF IN PERSONAM JURISDICTION IN CASES SUCH AS THE CASE AT BAR CREATES THE POTENTIAL FOR ABUSE.**

In a case presently pending in the Federal District Court in Miami involving this amicus, *Lucrecia Hernandez v. Alcan Aluminio do Brasil, S.A., et al.*, U. S. District Court, Southern District of Florida, Case No. 85-2729-CIV-SCOTT, the plaintiff who alleges injury by a pressure cooker sued Alcan, its U.S. affiliate who neither makes nor sells pressure cookers and its Canadian parent who neither makes nor sells pressure cookers. The plaintiff has never made an effort to sue the Miami retailer or importer even though she was fully capable of doing so and, in fact, has allowed the statute of limitations to run against these parties forever barring her claims against them. Why

would a plaintiff clearly ignore immediately available and directly related parties and instead sue a series of Alcan companies whose common characteristic is that they are foreign to the Florida jurisdiction (the U.S. company, Alcan Aluminum Corporation, is an Ohio corporation with head offices outside of Florida); two of the companies do not even exist in the United States, and only one, Alcan Aluminio do Brasil, S.A., has any conceivable relevance to the claim. The answer is simple; the plaintiff wants to economically force a settlement regardless of the merits of her claim.

It is well recognized that defending a lawsuit outside of the jurisdiction in which you reside is more costly than defending a lawsuit in your place of residence. Thus, being forced to defend a case in another state puts you at some economic disadvantage. However, having to defend a case in a completely different country, many thousands of miles away, with the difficulties of language and culture, can create enormous disadvantages of cost for foreign national defendants. These economic disadvantages can obviate the fundamental fairness upon which the U.S. justice system rests.

## **IV. THE EXERCISE OF JURISDICTION BY U.S. COURTS IMPLIES THAT FOREIGN COURTS MAY EXERCISE JURISDICTION ON U.S. NATIONALS UNDER SIMILAR CIRCUMSTANCES.**

The recent expansive exercise of jurisdiction as exemplified by the facts of this case have thus far been limited to courts in this country. However, if it is fair for a U.S. court to exercise jurisdiction over a foreign national simply because some of its products foreseeably make their way into the United States through the efforts

of independent third parties, is it not equally fair for U.S. nationals to be sued by foreign nationals in foreign jurisdictions? If an American is sued in an Iranian Court, must he appear and develop a record to show Iranian procedure denied him Due Process to forestall enforcement of the Iranian judgment by a U.S. Court?

This Court should consider the implications of a decision that the Due Process requirement of the Federal Constitution is met by the mere foreseeable existence of a foreign national's product in a country. As an American might find defending a case in Iran an unfair burden simply because its product was imported into Iran by a third party, so the petitioner and the amicus in this case find it an unfair burden to defend cases in the U.S. where the introduction of its product into the U.S. was a result of activities of third parties.

**V. IF THIS COURT WERE TO PERMIT THE EXERCISE OF IN PERSONAM JURISDICTION AGAINST THIS PETITIONER, THE APPLICATION OF CALIFORNIA LAW IN THIS CASE WOULD RAISE SERIOUS FOREIGN COMMERCE CLAUSE ISSUES.**

It would be incorrect for this Court to assume that, if it should hold the exercise of in personam jurisdiction in this case is proper, the California courts would then be entitled to adjudicate liability under California law. We believe such a result would be precluded by the Foreign Commerce Clause of the U.S. Constitution.

The Foreign Commerce Clause of the United States Constitution provides that it shall be the exclusive province of Congress, "To regulate commerce with foreign nations," United States Constitution, Article I, Section 8. The clause

prohibits the individual states from interfering in matters of foreign commerce. This Court has consistently interpreted this to mean that state laws are unconstitutional to the extent they burden foreign commerce. This Court's most recent statement concerning this prohibition is contained in *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979), and that case makes it clear that it would be unconstitutional to impose liability on petitioner in this case under California law.

It is not in dispute that petitioner does not exist in the United States. Third party plaintiff attempts to assert jurisdiction based on the alleged minimum contacts with the forum. Nonetheless, it is not disputed that petitioner designed, manufactured and sold the valve in question all outside of the United States. Yet, plaintiff here seeks to have petitioner held liable for injuries caused by alleged defects in the valve under California law. This would have the clear result of imposing liability under California law for actions taken wholly in foreign commerce. This result is simply contrary to the precepts of *Japan Line*.

In *Japan Line*, a foreign company clearly caused its product to be located within the geographic boundaries of California and there was no dispute that Japan Line's container was, therefore, subject to the jurisdiction of U.S. courts. Nor was it an issue as to whether the Due Process Clause of the United States Constitution permitted a property tax at issue to be assessed. The only obstacle to the State's ability to collect the tax was that it was a state imposed liability on an object this Court determined was still essentially involved in commercial activities being conducted outside of the United States, although the container had momentarily come to rest in California.

Plaintiff in this case would have the California Court impose California law on the activities of petitioner conducted wholly outside the United States. While in *Japan Line*, Japan Line owned the container in the United States, petitioner was not the owner of the chattel which allegedly injured the plaintiff. Its activities were entirely in foreign commerce and the imposition of California law on those activities necessarily results in a violation of the Foreign Commerce Clause.

Thus, if this Court were to find in personam jurisdiction, it would then have to apply Taiwanese and/or Japanese law to determine the existence and extent of liability, and that task might better be left to those courts.

### CONCLUSION

This Court should clearly reject the notion that United States courts can, consistent with the Due Process Clause, exercise in personam jurisdiction over foreign nationals who design, manufacture and sell a product outside of the United States, simply because it is reasonably foreseeable that the product will make its way into the United States through the efforts of third parties.

Such a doctrine in today's international marketplace would, as a practical matter, confer world-wide jurisdiction in the United States.

U.S. citizens are adequately protected by limiting jurisdiction to those entities who introduce the product into the United States or its retailer and laws requiring liability insurance offer the opportunity for additional protection if the legislative aim of the government deems it necessary. Denying in personam jurisdiction would also eliminate the potential for substantial abuse and unfairness of haling foreign nationals into a U.S. forum,

putting them at a severe economic and cultural disadvantage, and then attempting to judge propriety of their activities not by the laws of the country in which those activities took place, but rather by the laws of a state in which one of their products comes to reside.

The present doctrine developed by this Court promulgated in *Volkswagen* and *Hanson*, if adapted to the foreign context, provides a sound theoretical basis to reject the application of in personam jurisdiction in this case, and Amicus urges this Court to so hold.

Respectfully submitted,

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